Senate

General Assembly

File No. 493

January Session, 2013

Substitute Senate Bill No. 1082

Senate, April 15, 2013

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING BROWNFIELD REDEVELOPMENT, INSTITUTIONAL CONTROLS AND SIGNIFICANT ENVIRONMENTAL HAZARD PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2013*) (a) For the purposes of this section:

(1) "Applicant" means any (A) municipality, (B) economic development agency or entity established pursuant to chapter 130 or 132 of the general statutes, (C) nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality and that is funded, either directly or through in-kind services, in part by a municipality, or (D) a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating pursuant to chapter 130 or 132 of the general statutes;

(2) "Municipality" has the same meaning as provided in section 8-187 of the general statutes;

(3) "Brownfield" has the same meaning as provided in section 32-9kk of the general statutes;

(4) "Commissioner" means the Commissioner of Energy and Environmental Protection; and

(5) "Regulated substance" means any oil or petroleum or chemical liquid or solid, liquid or gaseous product or hazardous waste.

(b) There is established a brownfield liability relief program to assist applicants with the redevelopment of eligible brownfields and to provide such applicants with liability relief for such brownfields. The Commissioner of Energy and Environmental Protection shall administer such relief program and accept brownfields into such program based on the eligibility criteria, as established in this section.

(c) Prior to acquiring a brownfield, any applicant may apply to the commissioner, on such forms as the commissioner prescribes, to obtain liability relief as described in subsection (d) of this section. Any brownfield shall be eligible for the program if the commissioner determines that: (1) The property is a brownfield; (2) such applicant intends to acquire title to such brownfield for the purpose of redeveloping or facilitating the redevelopment of such brownfield; (3) such applicant did not establish or create a facility or condition at or on such brownfield that can reasonably be expected to create a source of pollution to the waters of the state; (4) such applicant is not affiliated with any person responsible for such pollution or source of pollution through any contractual, corporate or financial relationship other than a municipality's exercise of such municipality's police, regulatory or tax powers or a contractual relationship in which such person's interest in such brownfield will be conveyed or financed; (5) such applicant is not otherwise required by law, an order or consent order issued by the commissioner or a stipulated judgment to remediate pollution on or emanating from such brownfield; and (6) such brownfield and

applicant meet any other criteria that said commissioner deems necessary.

(d) (1) Upon the acceptance of any brownfield into such program by the commissioner and upon such applicant taking title to such property, such applicant shall not be liable to the state or any person for the release of any regulated substance at or from the eligible brownfield that occurred prior to such applicant taking title to such brownfield, except such applicant shall be liable to the state or any person to the extent that such applicant caused or contributed to the release of a regulated substance that is subject to remediation and to the extent that such applicant negligently or recklessly exacerbated the condition of such brownfield.

(2) Any applicant that owns a brownfield that is accepted in such brownfield liability relief program shall be considered an innocent party and shall not be liable to the commissioner or any person under section 22a-427, 22a-430, 22a-432, 22a-451 or 22a-452 of the general statutes nor under any theory of common law for any prior existing condition on such brownfield or any existing condition on such brownfield property as of the date of taking title to such brownfield provided such applicant (A) did not establish, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution, (B) does not exacerbate any such condition on such brownfield, (C) complies with the reporting and abatement of significant environmental hazard requirements in section 22a-6u of the general statutes, as amended by this act, and (D) makes good faith efforts to minimize the risk to public health and the environment posed by such brownfield and the conditions or materials present at such brownfield. To the extent that any conditions on such brownfield are exacerbated by such applicant, such applicant shall only be responsible for responding to contamination exacerbated by such applicant's negligent or reckless activities.

(e) After acceptance of any brownfield into such program by the

commissioner and upon such applicant taking title to such property, such applicant shall (1) submit a plan and schedule for minimizing the risk to public health and the environment posed by such brownfield and the conditions or materials present at such brownfield; and (2) continue to facilitate the investigation, remediation, and redevelopment of such brownfield.

(f) The commissioner shall determine whether an application submitted pursuant to this section is complete. If the commissioner determines that an application is complete and that such brownfield and applicant meet the requirements for eligibility, as established in subsection (c) of this section, the commissioner shall notify such applicant that such brownfield has been accepted into the brownfield liability relief program.

(g) Acceptance of a brownfield in such brownfield liability relief program shall not limit such applicant's or any other person's ability to seek funding for such brownfield under any other brownfield grant or loan program administered by the Department of Economic and Community Development, the Connecticut Brownfield Redevelopment Authority, or the Department of Energy and Environmental Protection.

(h) Acceptance of a brownfield in such brownfield liability relief program shall exempt such applicant from the requirement to file as an establishment pursuant to sections 22a-134a to 22a-134d, inclusive, of the general statutes, if such brownfield constitutes an establishment, as defined in section 22a-134 of the general statutes.

Sec. 2. Subsections (b) to (g), inclusive, of section 22a-6u of the general statutes are repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

(b) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of a public or private drinking

water well with: [a] (A) A substance for which the Commissioner of Energy and Environmental Protection has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration above the ground water protection criterion for such substance, or (B) the presence of nonaqueous phase liquid, such professional shall notify his or her client and the owner of the parcel, if the owner can reasonably be identified, not later than twenty-four hours after determining that the contamination exists. If, seven days after such determination, the owner of the subject parcel has not notified the commissioner, the client of the professional shall notify the commissioner. If the owner notifies the commissioner, the owner shall provide documentation to the client of the professional which verifies that the owner has notified the commissioner.

(2) The owner of a parcel on which exists a source of contamination to soil or waters of the state shall notify the commissioner if such owner becomes aware that such pollution is causing or has caused contamination of a private or public drinking water well with either a substance for which the commissioner has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration at or above the ground water protection criterion for such substance, or the presence of nonaqueous phase liquid. Notice under this section shall be given to the commissioner (A) orally, not later than one business day after such person becomes aware that the contamination exists, and (B) in writing, not later than five days after such oral notice.

(3) Not later than thirty days after the date the owner of such parcel becomes aware of such contamination, such owner shall determine the presence of any other water supply wells located within five hundred feet of the polluted well by conducting a receptor survey and such owner shall seek access to all drinking water supply wells within one hundred feet of the polluted well for sampling. If such access is granted, such owner shall sample and analyze the water quality of such wells, and submit a report of such evaluation to the commissioner that includes proposals for further action.

(c) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of a public or private drinking water well with: (A) A substance for which the commissioner has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration less than such ground water protection criterion for such substance; or (B) any other substance resulting from the release which is the subject of the investigation or remediation, such professional shall notify his client and the owner of the parcel, if the owner can reasonably be identified, not later than seven days after determining that the contamination exists.

(2) The owner of a parcel on which exists a source of pollution to soil or the waters of the state shall notify the commissioner if such owner becomes aware that such pollution is causing or has caused contamination of a private or public drinking water well with: (A) A substance for which the commissioner has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration less than such ground water protection criterion for such substance; or (B) any other substance which was part of the release which caused such pollution. Notice under this subdivision shall be given in writing not later than **[**seven**]** thirty days after the time such person becomes aware that the contamination exists.

(3) Not later than thirty days after the time such owner becomes aware that such contamination exists, such owner shall perform confirmatory sampling of the well, and submit a report concerning such confirmatory sampling to the commissioner that includes proposals for any further action. If such confirmatory sampling demonstrates a concentration above the ground water protection criterion for such substance, such owner shall proceed in accordance with the provisions of subdivision (2) of subsection (b) of this section.

(d) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution of soil within two feet of the ground surface contains a substance, except for total petroleum hydrocarbon, at a concentration at or above **[**thirty**]** ten times the industrial/commercial direct exposure criterion for such substance if the parcel is in industrial or commercial use, or the residential direct exposure criterion if the parcel is in residential use, which criteria are specified in regulations adopted pursuant to section 22a-133k, such professional shall notify his client and the owner of the parcel, if such owner is reasonably identified, not later than seven days after determining that the contamination exists, except that notice will not be required if **[**the**]** either: (A) The land-use of such parcel is not residential activity and the substance is one of the following: Acetone, 2-butanone, chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene, toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene, butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene, phenanthrene, phenol and pyrene, or (B) data shows that within the two feet of the ground surface the soil is not polluted at or above ten times the relevant direct exposure criteria.

(2) The owner of the subject parcel shall notify the commissioner in writing not later than ninety days after the time such owner becomes aware that the contamination exists except that notification will not be required if by the end of said ninety days: (A) The contaminated soil is remediated in accordance with regulations adopted pursuant to section 22a-133k; (B) the contaminated soil is inaccessible soil as that term is defined in regulations adopted pursuant to section 22a-133k; or (C) the contaminated soil which exceeds **[**thirty**]** ten times such criterion is treated or disposed of in accordance with all applicable laws and regulations.

(3) Not later than the due date for any written notification required pursuant to subdivision (2) of this subsection, such owner shall, at a minimum: (A) Evaluate the extent of such contaminated soil that exceeds ten times the applicable direct exposure criteria, (B) prevent exposure to such soil, and (C) submit a report on such evaluation and prevention to the commissioner that includes proposals for further action, including, but not limited to, maintenance and monitoring of interim controls to prevent exposure to soil that exceeds ten times the applicable criteria.

(e) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused ground water within fifteen feet beneath an industrial or commercial building to be contaminated with a volatile organic substance at a concentration at or above **[**thirty**]** ten times the industrial/commercial volatilization criterion for ground water for such substance or, if such contamination is beneath a residential building, at a concentration at or above thirty times the residential volatilization criterion, which criteria are specified in regulations adopted pursuant to section 22a-133k, such professional shall, not later than seven days after determining that the contamination exists, notify his client and the owner of the subject parcel, if such owner can reasonably be identified.

(2) The owner of such parcel shall notify the commissioner in writing not later than thirty days after such person becomes aware that the contamination exists except that notification is not required if: (A) The concentration of such substance in the soil vapor beneath such building is at or below **[**thirty**]** ten times the soil vapor volatilization criterion, appropriate for the land-use for the parcel, for such substance as specified in regulations adopted pursuant to section 22a-133k; (B) the concentration of such substance in groundwater is below **[**thirty**]** ten times a site-specific volatilization criterion for ground water for such substance calculated in accordance with regulations adopted pursuant to section 22a-133k; (C) ground water volatilization

criterion, appropriate for the land-use of the parcel, for such substance specified in regulations adopted pursuant to section 22a-133k is fifty thousand parts per billion; or (D) not later than thirty days after the time such person becomes aware that the contamination exists, an indoor air monitoring program is initiated in accordance with subdivision (3) of this subsection.

(3) An indoor air quality monitoring program for the purposes of this subsection shall consist of sampling of indoor air once every two months for a duration of not less than one year, sampling of indoor air immediately overlying such contaminated ground water, and analysis of air samples for any volatile organic substance which exceeded **[**thirty**]** ten times the volatilization criterion as specified in or calculated in accordance with regulations adopted pursuant to section 22a-133k. The owner of the subject parcel shall notify the commissioner if: (A) The concentration in any indoor air sample exceeds **[**thirty**]** ten times the target indoor air concentration, appropriate for the land-use of the parcel, as specified in regulations adopted pursuant to section 22a-133k; or (B) the indoor air monitoring program is not conducted in accordance with this subdivision. Notice shall be given to the commissioner in writing not later than seven days after the time such person becomes aware that such a condition exists.

(f) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of ground water which is discharging to surface water and such ground water is contaminated with: **[**a substance**]** (A) A substance for which an acute aquatic life criterion is listed in appendix D of the most recent water quality standards adopted by the commissioner at a concentration which exceeds ten times **[**(A)**]** (i) such criterion for such substance in said appendix D, or **[**(B)**]** (ii) such criterion for such substance times a site specific dilution factor calculated in accordance with regulations adopted pursuant to section 22a-133k, or (B) a nonaqueous phase liquid, such professional shall notify his client and the owner of such

parcel, if such owner can reasonably be identified, not later than **[**seven**]** thirty days after determining that the contamination exists.

(2) **[**The**]** For nonaqueous phase liquid, the owner of such parcel shall notify the commissioner (A) orally, not later than one business day after such person becomes aware of such contamination, and (B) in writing, not later than thirty days after such oral notice. For contamination with a substance, as described in subdivision (1) of this subsection, such owner shall notify the commissioner, in writing, not later than **[**seven**]** thirty days after the time such person becomes aware that the contamination exists. **[**except that notice**]** Notice shall not be required pursuant to this subdivision if such person knows that the polluted discharge at that concentration **[**has been**]** or in such physical state was reported to the commissioner, in writing, within the preceding year.

(3) For any location where nonaqueous phase liquid discharges to a surface water, such owner shall (A) take immediate action to mitigate and abate such discharge, and (B) not later than thirty days after the date written notification is due pursuant to this subsection, submit a report to the commissioner of mitigation measures taken and a plan for further action to abate and mitigate such hazard. For any contamination with a substance as described in subdivision (1) of this subsection, the owner shall submit a proposed plan to the commissioner to abate and mitigate the hazard.

(g) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of ground water within five hundred feet in an upgradient direction or two hundred feet in any direction of a private or public drinking water well which ground water is contaminated with a substance resulting from a release for which the commissioner has established a ground water protection criterion in regulations adopted pursuant to section 22a-133k at a concentration at or above the ground water protection criterion for

such substance, such technical environmental professional shall notify his client and the owner of the subject parcel, if such owner can reasonably be identified, not later than [seven] thirty days after determining that the contamination exists.

(2) The owner of the subject parcel shall notify the commissioner in writing not later than [seven] thirty days after the time such owner becomes aware that the contamination exists.

(3) Not later than thirty days after the date such owner becomes aware of such contamination, such owner shall determine the presence of any other water supply wells located within five hundred feet of such location by conducting a receptor survey and seeking access for the purpose of sampling all drinking water supply wells within one hundred feet of such location. If such access is granted, such owner shall sample and analyze the water quality of such wells and submit a report to the commissioner concerning such evaluation that includes any proposals for further action.

Sec. 3. Subsections (k) to (m), inclusive, of section 22a-6u of the general statutes are repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(k) The commissioner shall provide written acknowledgment of receipt of a written notice pursuant to this section not later than ten days after receipt of such notice [. Such acknowledgment shall be accompanied by (1) a statement that] and in such acknowledgement may provide any information that the commissioner deems appropriate. Unless otherwise specified in this subsection, the owner of the parcel [has up to ninety days within which to] shall, not later than ninety days after the date such owner becomes aware that such contamination exists, submit to the commissioner a plan to remediate or abate the contamination or condition or that describes how the contamination or condition was abated, as applicable. If such plan is not submitted or is not approved by the commissioner, the commissioner shall prescribe the action to be taken [, or (2)] or issue a directive as to action required to remediate or abate the contamination

or condition. If a plan is submitted which details actions to be taken, or a report is submitted which details actions taken, to mitigate the contamination or conditions such that notice under this section would not be required, and such plan or report is acceptable to the commissioner, the commissioner shall approve such plan or report in writing. When actions implementing an approved plan are completed or when a report, stamped and sealed by a licensed environmental professional, demonstrates that such release was remediated in accordance with regulations adopted pursuant to section 22a-133k, the commissioner shall issue a certificate of compliance.

(l) An owner who has submitted written notice pursuant to this section shall, not later than five days after the commencement of an activity by any person that increases the likelihood of human exposure to known contaminants, including, but not limited to, construction, demolition, significant soil disruption or the installation of utilities, post such notice in a conspicuous place on such property and, in the case of a place of business, in a conspicuous place inside the place of business. An owner who violates this **[**subsection**]** section shall pay a civil penalty of one hundred dollars for each offense. Each violation shall be a separate and distinct offense and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Attorney General, upon complaint of the commissioner, shall institute an action in the superior court for the judicial district of Hartford to recover such penalty.

(m) Not later than ten days after receipt of any written notice received under this section, the commissioner shall: (1) Forward a copy of such notice to the chief elected official of the municipality in which the subject pollution was discovered by the technical environmental professional, (2) forward a copy of such notice to the state senator and state representative representing the area in which the subject pollution was discovered by the technical environmental professional, (3) forward a copy of such notice to the Labor Commissioner where the Division of Occupational Safety and Health, within the Labor Department, has jurisdiction over the employers, employees and

places of employment on the subject property, (4) forward a copy of such notice to the employee representatives who request such reports, (5) forward a copy of such notice to the federal Occupational Safety and Health Administration, and (6) maintain a list on the department's Internet web site of all the notices received under this section. Any forwarding of such notice, as required by this subsection, shall be performed by electronic means.

Sec. 4. Section 22a-133o of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) An owner of land **[**may**]** shall execute and record an environmental land use restriction under sections 22a-133n to 22a-133r, inclusive, as amended by this act, on the land records of the municipality in which such land is located if (1) the commissioner has adopted standards for the remediation of contaminated land pursuant to section 22a-133k and adopted regulations pursuant to section 22a-133q, as amended by this act, (2) the commissioner, or in the case of land for which remedial action was supervised under section 22a-133y, a licensed environmental professional, determines, as evidenced by his signature on such restriction, that it is consistent with the purposes and requirements of sections 22a-133n to 22a-133r, inclusive, as amended by this act, and of such standards and regulations, and (3) such restriction will effectively protect public health and the environment from the hazards of pollution. Such environmental land use restriction may be in the form of an environmental land use restriction, as described in subsection (b) of this section, or a notice of activity and use limitation, as described in subsection (c) of this section.

(b) (1) No owner of land may record an environmental land use restriction on the land records of the municipality in which such land is located unless he simultaneously records documents which demonstrate that each person holding an interest in such land or any part thereof, including without limitation each mortgagee, lessee, lienor and encumbrancer, irrevocably subordinates such interest to the

environmental land use restriction, provided the commissioner may waive such requirement if he finds that the interest in such land is so minor as to be unaffected by the environmental land use restriction. The commissioner shall waive the requirement to obtain subordination agreements for any interest in land that, when acted upon, is not capable of creating a condition contrary to any purpose of such environmental land use restriction. An environmental land use restriction shall run with land, shall bind the owner of the land and his successors and assigns, and shall be enforceable notwithstanding lack of privity of estate or contract or benefit to particular land.

[(c)**]** (2) Within seven days after executing an environmental land use restriction and receiving thereon the signature of the commissioner or licensed environmental professional, as the case may be, the owner of the land involved therein shall record such restriction and documents required under **[**subsection (b) of this section**]** subdivision (1) of this subsection on the land records of the municipality in which such land is located and shall submit to the commissioner a certificate of title certifying that each interest in such land or any part thereof is irrevocably subordinated to the environmental land use restriction in accordance with **[**said subsection (b)**]** subdivision (1) of this subsection.

[(d)**]** (3) An owner of land with respect to which an environmental land use restriction applies may be released, wholly or in part, permanently or temporarily, from the limitations of such restriction only with the commissioner's written approval which shall be consistent with the regulations adopted pursuant to section 22a-133q, as amended by this act, and shall be recorded on the land records of the municipality in which such land is located. The commissioner may waive the requirement to record such release if he finds that the activity which is the subject of such release does not affect the overall purpose for which the environmental land use restriction was implemented, or for a temporary release, the activity is sufficiently limited in scope and duration, and does not alter the size of the area subject to the environmental land use restriction. The commissioner shall not approve any such permanent release unless the owner

demonstrates that he has remediated the land, or such portion thereof as would be affected by the release, in accordance with the standards established pursuant to section 22a-133k.

[(e)**]** (4) An environmental land use restriction shall survive foreclosure of a mortgage, lien or other encumbrance.

(c) (1) A notice of activity and use limitation may be used and recorded for releases remediated in accordance with the regulations adopted pursuant to sections 22a-133k and 22a-133q, as amended by this act, for the following purposes:

(A) To achieve compliance with industrial or commercial direct exposure criteria, groundwater volatilization criteria, and soil vapor criteria, as established in regulations adopted pursuant to section 22a-133k, by preventing residential activity and use of the area to be affected through the notice of activity and use limitation, provided such property is zoned to exclude residential use and is not used for any residential use, as defined in regulations adopted pursuant to section 22a-133k;

(B) To prevent disturbance of polluted soil that exceeds the applicable direct exposure criteria but that is inaccessible, in compliance with the provisions of the regulations adopted pursuant to section 22a-133k, provided pollutant concentrations in such inaccessible soil do not exceed ten times the applicable direct exposure criteria;

(C) To prevent disturbance of an engineered control to the extent such engineered control is for the sole remedial purpose of eliminating exposure to polluted soil that exceeds the direct exposure criteria, provided pollutant concentrations in such soil do not exceed ten times the applicable direct exposure criteria;

(D) To prevent demolition of a building or permanent structure that renders polluted soil environmentally isolated, provided: (i) The pollutant concentrations in the environmentally isolated soil do not

exceed ten times the applicable direct exposure criteria and the applicable pollutant mobility criteria, or (ii) the total volume of soil that is environmentally isolated is less than or equal to ten cubic yards; or

(E) Any other purpose the commissioner may prescribe by regulations adopted in accordance with the provisions of chapter 54.

(2) No owner shall record a notice of activity and use limitation on the land records of the municipality in which such land is located unless such owner, not later than sixty days prior to such recordation, provides written notice to each person who holds an interest in such land or any part thereof, including each mortgagee, lessee, lienor and encumbrancer. Such written notice of the proposed notice of activity and use limitation shall be sent by certified mail, return receipt requested, and shall include notice of the existence and location of pollution within such area and the terms of such proposed activity and use limitation. Such sixty-day-notice period may be waived upon the written agreement of all such interest holders.

(3) A notice of activity and use limitation recorded pursuant to this subsection shall be implemented and adhered to by the owner and holders of interests in the property and any person who has a license to use such property, and such owner's successors and assigns, or to conduct remediation on any portion of such property.

(4) Any notice of activity and use limitation shall be effective when recorded on the land records of the municipality in which such property is located.

(5) (A) Any notice of activity and use limitation, as described in this subsection, shall be prepared on a form prescribed by the commissioner.

(B) A notice of activity and use limitation decision document, signed by the commissioner or signed and sealed by a licensed environmental professional, shall be referenced in and recorded with any such notice

of activity and use limitation, and shall specify:

(i) Why the notice of activity and use limitation is appropriate for achieving and maintaining compliance with the regulations adopted pursuant to section 22a-133k;

(ii) Any activities and uses that are inconsistent with maintaining compliance with such regulations;

(iii) Any activities and uses to be permitted;

(iv) Any obligations and conditions necessary to meet the objectives of the notice of activity and use limitation; and

(v) The nature and extent of pollution in the area that is the basis for the notice of activity and use limitation, including a listing of contaminants and concentrations for such contaminants, and the horizontal and vertical extent of such contaminants.

(6) Upon transfer of any interest in or a right to use property, or a portion of property that is subject to a notice of activity and use limitation, the owner of such land, any lessee of such land and any person who has the right to subdivide or sublease such property, shall incorporate such notice in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements and any other instrument of transfer.

(7) Any notice of activity and use limitation shall survive foreclosure of a mortgage, lien or other encumbrance.

Sec. 5. Section 22a-133p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) The Attorney General, at the request of the commissioner, shall institute a civil action in the superior court for the judicial district of Hartford or for the judicial district wherein the subject land is located for injunctive or other equitable relief to enforce an environmental land use restriction, a notice of activity and use limitation or the provisions

of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted [thereunder] pursuant to said sections or to recover a civil penalty pursuant to subsection (e) of this section.

(b) The commissioner may issue orders pursuant to sections 22a-6 and 22a-7 to enforce an environmental land use restriction, a notice of activity and use limitation or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted [thereunder] pursuant to said sections.

(c) In any administrative or civil proceeding instituted by the commissioner to enforce an environmental land use restriction, a notice of activity and use limitation or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted [thereunder] pursuant to said sections, any other person may intervene as a matter of right.

(d) In any civil or administrative action to enforce an environmental land use restriction, a notice of activity and use limitation or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder, the owner of the subject land, and any lessee thereof, shall be strictly liable for any violation of such restriction, limitation or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted [thereunder] pursuant to said sections and shall be jointly and severally liable for abating such violation.

(e) Any owner of land with respect to which an environmental land use restriction or a notice of activity and use limitation applies, and any lessee of such land, who violates any provision of such restriction or limitation or violates the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted [thereunder] pursuant to said sections shall be assessed a civil penalty under section 22a-438. The penalty provided in this subsection shall be in addition to any injunctive or other equitable relief.

Sec. 6. Section 22a-133q of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective October 1, 2013*):

The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the purposes of sections 22a-133n to 22a-133r, inclusive, as amended by this act. Such regulations may include, but not be limited to, provisions regarding the form, contents, fees, financial surety, monitoring and reporting, filing procedure for, and release from, environmental land use restrictions and notice of activity and use limitations.

Sec. 7. Section 22a-133r of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

In the event that a court of competent jurisdiction finds for any reason that an environmental land use restriction or notice of activity and use limitation is void or without effect for any reason, the owner of the subject land, in accordance with a schedule prescribed by the commissioner, shall promptly abate pollution thereon consistently with standards adopted under section 22a-133k for remediation of land used for residential or recreational purposes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2013*	New section
Sec. 2	*July 1, 2015*	22a-6u(b) to (g)
Sec. 3	*October 1, 2013*	22a-6u(k) to (m)
Sec. 4	*October 1, 2013*	22a-133o
Sec. 5	*October 1, 2013*	22a-133p
Sec. 6	*October 1, 2013*	22a-133q
Sec. 7	*October 1, 2013*	22a-133r

ENV *Joint Favorable Subst.*

OFA Fiscal Note

State Impact: See Below

Municipal Impact: See Below

Explanation

The bill establishes a brownfield liability relief program, administered by the Department of Energy and Environmental Protection (DEEP), for municipal liability relief.

This does not result in additional costs to DEEP as owners of brownfields, including municipalities, may apply to pre-existing competitive grant or loan programs. To the extent this extends liability relief to various municipalities, there may be significant savings to various municipalities. It is estimated there are currently 50 brownfields under the care and control of municipalities.

Additionally, the bill extends a $100 per day civil penalty to anyone who violates the contamination notification laws. This may result in a revenue gain to the state, estimated to be less than $20,000 annually from the occurrence of additional violations.

Lastly, the bill subjects a land owner or lessee of property that may have certain land use restrictions, to a civil penalty of up to $25,000 for violations of certain provisions. To the extent a municipality is a land owner or lessee and violates these provisions, there may be a cost of up to $25,000 to any municipality for each violation and a commensurate revenue gain to the state.

The Out Years

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation and liability relief granted to municipalities.

OLR Bill Analysis

sSB 1082

AN ACT CONCERNING BROWNFIELD REDEVELOPMENT, INSTITUTIONAL CONTROLS AND SIGNIFICANT ENVIRONMENTAL HAZARD PROGRAMS.

SUMMARY:

This bill establishes a new brownfield liability relief program administered by the Department of Energy and Environmental Protection (DEEP) to assist municipalities with brownfield redevelopment. The bill (1) sets eligibility and other requirements for applicants and brownfields, (2) deems applicants owning brownfields in the program to be "innocent parties," and (3) exempts participating brownfields from the Transfer Act.

The bill makes many changes to the law's notification requirements when certain contamination is discovered. Often, notice must be provided to the client of the technical environmental professional who discovers it, the property owner, and the DEEP commissioner. Among other things, the bill:

1. extends the time by which certain notifications must be made;

2. decreases the concentration threshold, from 30 times to 10 times the pollution criterion, that requires notification of certain types of contamination;

3. requires notice for certain contamination involving a nonaqueous phase liquid; and

4. requires additional actions after notification, such as conducting evaluations and sampling and providing the commissioner with proposals for future action.

It also applies a $100 per day civil penalty that currently applies only to owners who fail to post a certain notice, to anyone who violates the contamination notification laws.

The bill also requires, instead of allows, recording an environmental land use restriction under certain circumstances, and creates a new "notice of activity and use limitation" to be used for specific types of contaminated properties. The bill establishes the process for preparing and recording the notice and describes its effect once recorded. It also applies current law's enforcement provisions for environmental use restrictions to these notices.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013, except the liability relief program is effective July 1, 2013 and the provision requiring notice of certain contamination and well sampling is effective July 1, 2015.

§ 1 — BROWNFIELD LIABILITY RELIEF PROGRAM

Purpose

The bill requires the DEEP commissioner to (1) administer a brownfield liability relief program and (2) accept eligible brownfields into the program (see below). The program assists applicants with redeveloping eligible brownfields and relieves them of liability for these properties.

If a brownfield is accepted into the program, applicants and others may seek funding for the property from grant or loan programs administered by the Department of Economic and Community Development (DECD), the Connecticut Brownfield Redevelopment Authority (CBRA), or DEEP (see BACKGROUND).

Eligible Applicants

The program is open to:

1. municipalities;

2. municipal economic development agencies or entities;

3. nonprofit economic development corporations established to promote a municipality's common good, general welfare, and economic development, that are partly funded directly or through in-kind services by a municipality; and

4. nonstock corporations or limited liability companies that a municipality or municipal economic development agency or entity establishes or controls.

Eligible Brownfields

Brownfields are abandoned or underutilized sites where groundwater or soil contamination or pollution in buildings on the site requiring investigation or remediation discourages their redevelopment, reuse, or expansion.

Under the bill, a brownfield is eligible if the DEEP commissioner determines the:

1. property is a brownfield;

2. applicant intends to acquire title to redevelop the brownfield or facilitate its redevelopment;

3. applicant did not create a facility or condition at or on the property that can be reasonably expected to pollute state waters;

4. applicant has no contractual, corporate, or financial relationship with anyone responsible for the property's pollution or pollution sources, other than municipal police, regulatory, or taxing powers, or a contractual relationship to convey or finance the property;

5. applicant is not obligated by law, order or consent order, or stipulated judgment to remediate pollution on or from the property; and

6. brownfield and applicant meet any other criteria he determines necessary.

Application and Acceptance Process

The bill allows applicants to apply to the commissioner for relief, on a form he prescribes, before acquiring a brownfield. It requires the DEEP commissioner to determine if an application is complete. If so, and the applicant and brownfield meet the eligibility criteria, the commissioner must notify the applicant of the brownfield's acceptance into the program.

Once a brownfield is accepted into the program and an applicant takes title to it, the bill requires the applicant to:

1. submit a plan and schedule to minimize risk to public health and the environment from the brownfield and the conditions and materials located there and

2. continue helping to investigate, remediate, and redevelop the brownfield.

Liability Protection

Once a brownfield is accepted into the program and an applicant takes title to it, the applicant is relieved from liability for the release of a regulated substance at or from the site that occurred before the applicant took title. But the applicant remains liable to the extent it (1) caused or contributed to the release being remediated or (2) negligently or recklessly exacerbated the brownfield's condition.

The bill specifies that applicants owning a brownfield accepted into the program are deemed "innocent parties" and generally not liable for (1) causing water pollution or land contamination, (2) discharging without a permit, (3) maintaining a facility or condition that can be expected to create water pollution, (4) reimbursement for others' containment or removal costs, or (5) any common law theory for the brownfield's prior existing condition as of the date the applicant takes title.

But an applicant is liable if it:

1. established, caused, or contributed to the discharge, spillage, uncontrolled loss, seepage, or filtration of a hazardous substance, material, waste, or pollution;

2. exacerbated any such brownfield condition;

3. failed to comply with the law's reporting and abatement requirements for significant environmental hazards (see below); or

4. failed to make good faith efforts to minimize the risk to public health and the environment from the brownfield and its conditions or materials.

If an applicant exacerbates the brownfield's conditions, the applicant's liability is limited to responding to contamination exacerbated by negligence or recklessness.

Transfer Act Exemption

The bill exempts brownfields accepted into the program that are also "establishments" under the Transfer Act, from the act's requirements.

By law, the Transfer Act governs the sale or other conveyance of certain property where hazardous waste was generated, used, or stored. It regulates "establishments," which include certain businesses, and property where (1) more than 100 kilograms (220 pounds) of hazardous waste was generated in a calendar month or (2) hazardous waste was recycled, reclaimed, reused, stored, handled, treated, transported, or disposed of. Among other things, the act requires anyone transferring an establishment to complete and submit to the DEEP commissioner one or more of four different forms, depending on the presence of hazardous waste or hazardous substances and the status of investigation and remediation.

§§ 2 & 3 — CONTAMINATION NOTICE AND FURTHER ACTION

Property Owner and TEP Notification Requirements (§ 2)

The law establishes specific notice requirements for certain situations when a technical environmental professional (TEP), by investigating or remediating pollution, determines that pollution is on or coming from a property and it is causing or has caused contamination. Often, notice must be provided to the client of the TEP who discovers it, the property owner if such owner can be reasonably identified, and the DEEP commissioner. By law, TEPs collect soil, water, vapor, or air samples to investigate and remediate pollution sources.

Most situations requiring notice are based on a substance's concentration levels compared to applicable criteria in the Remediation Standard Regulations (RSRs), such as direct exposure, groundwater protection, and volatilization criteria. The RSRs provide specific standards for remediating soil and groundwater (see BACKGROUND).

Drinking Water Well Contamination Above RSR Criterion. Under current law, when a TEP determines that a substance with a RSR groundwater protection criterion is causing or has caused contamination of a drinking water well at a concentration over the criterion, the TEP must notify his or her client and the property owner about the contamination. The bill also requires the TEP to provide notice if the drinking well water is contaminated with a nonaqueous phase liquid (NAPL). NAPLs are liquids that do not dissolve easily in water (e.g., gasoline or trichloroethylene).

The bill subjects the NAPL contamination to existing law's notice requirements. It requires the TEP to notify the client and property owner within 24 hours after learning of the contamination. The owner has seven days to notify the commissioner, and must provide evidence to the client that he or she did so. If the owner fails to notify the commissioner, the client must provide the notice.

By law, a property owner must notify the commissioner if he or she knows a contamination source that exists on his or her property is causing or has caused drinking water well contamination by a

substance at a concentration over the substance's RSR groundwater criterion. The notice must be provided orally within one business day after learning of the contamination and in writing within five days after the oral notice. The bill requires property owners to provide the same notice for contamination caused specifically by a NAPL.

The bill requires a property owner, within 30 days after learning of the contamination, to (1) determine if there are other water supply wells within 500 feet of the polluted well by using a receptor survey and (2) seek access to all drinking water supply wells within 100 feet of the polluted well for sampling. If access is granted, the owner must (1) sample and analyze the wells' water quality and (2) report the results to the commissioner with any proposals for further action.

Drinking Water Well Contamination Below RSR Criterion. The bill increases, from seven to 30 days, the time a property owner has to notify the commissioner in writing when he or she learns of pollution on the property that is causing or has caused drinking water well contamination by (1) a substance with an RSR groundwater protection criterion at a concentration below the criterion or (2) any other substance that was part of the release that caused the pollution.

The bill requires the property owner, within 30 days after learning of the contamination, to sample the well to confirm the pollution. He must then report to the commissioner on the sampling and provide any proposals for further action. If the sampling shows a concentration above the RSR groundwater protection criteria for the substance, the owner must provide the oral and written notice described above.

Contamination within Two Feet of the Ground Surface. Under current law, if soil pollution is determined to be within two feet of the surface of a property in industrial or commercial use and containing a substance, other than a total petroleum hydrocarbon, at a concentration of at least 30 times its RSR industrial and commercial direct exposure criteria, the TEP must notify his or client and the property owner within seven days after finding the contamination. The bill decreases the contamination threshold for requiring notice to

10 times the direct exposure criteria.

The law exempts a TEP from providing the above notice if the property's land use is not residential and the substance involved is one of 28 listed substances. Under the bill, a TEP is also exempt from giving notice if data shows the soil within two feet of the ground surface is not polluted at or over the lower threshold.

By law, an owner generally must notify the commissioner in writing within 90 days after learning of the contamination, but an owner is exempt if the contaminated soil is properly treated or discarded. The bill applies this exemption to owners of property at the reduced threshold.

The bill requires the property owner, also within 90 days, to (1) evaluate the extent of the contaminated soil that exceeds 10 times the direct exposure criteria; (2) prevent exposure to it; and (3) report to the commissioner on the evaluation and prevention with any proposals for further action, including maintenance and monitoring of interim controls.

Groundwater Contamination by a Volatile Organic Substance. The bill also decreases the notification threshold, from 30 to 10 times the industrial and commercial volatilization criteria for groundwater, when a polluting substance is causing or has caused groundwater up to 15 feet under an industrial or commercial building to be contaminated with a volatile organic substance. As under existing law, the TEP must notify the client and property owner within seven days of learning of the contamination and the owner must notify the commissioner within 30 days of learning of the contamination. The bill exempts the owner from the notice requirement if the substance's concentration is at or under 10 times, instead of 30 times, the RSR (1) soil vapor volatilization criterion for the property or (2) site-specific volatilization criteria for groundwater.

Existing law also exempts the owner if the groundwater volatilization criterion for the property and substance is 50,000 parts

per billion or the owner initiates an indoor air monitoring program within 30 days after learning of the contamination. By law, the indoor air monitoring program samples the indoor air immediately over the contaminated groundwater and analyzes the samples for volatile organic substances that exceed the allowed threshold of the volatilization criteria. The bill (1) reduces the allowed threshold from 30 times to 10 times the volatilization criteria and (2) makes a corresponding change regarding DEEP notification.

Groundwater Contamination Discharging to Surface Water. Current law requires a TEP to notify his or her client and the property owner within seven days of determining that (1) pollution is causing or has caused groundwater contamination that is discharging to surface water and (2) the groundwater is contaminated with a substance that has an acute aquatic life criterion listed in DEEP's water quality standards and the substance's concentration is over 10 times the (a) criterion or (b) criterion multiplied by a site specific dilution factor from the RSRs.

The bill also requires the TEP to notify the client and property owner when the groundwater is contaminated with a NAPL and requires him to notify both parties within 30 days, instead of seven, after learning of any contamination. The bill makes a corresponding change in the timeframe for owners to notify the commissioner in writing and continues to exempt them from notice if they know the polluted discharge at the same concentration was reported to the commissioner in writing during the prior year. The bill requires property owners, when dealing with a NAPL, to notify the commissioner both orally (within one business day) and in writing (within 30 days of providing oral notice) after learning of the contamination. Owners who know the polluted discharge in the same physical state was reported in writing to the commissioner during the prior year are exempt.

When NAPL discharges to surface water, owners must (1) immediately act to mitigate and abate the discharge and (2) report to

the commissioner about the mitigation measures taken and a plan for further action within 30 days after the date the owner must notify him in writing about the pollution. Owners of property with contamination by a substance over 10 times the acute aquatic life criterion must also provide the commissioner with a proposed abatement and mitigation plan.

Groundwater Contamination Near Certain Drinking Water Wells. Under current law, when a TEP determines that (1) pollution is causing or has caused groundwater contamination within 500 feet upgradient from a drinking water well and (2) the groundwater is contaminated with a substance at a concentration of at least the RSR groundwater protection criterion, the TEP must notify the client and property owner within seven days after finding the contamination. The property owner must notify the commissioner in writing within seven days of learning of the contamination. The bill requires the TEP and property owner to also provide this notice (and take the sampling and mitigation steps described below) if the pollution is causing or has caused contamination within a 200-foot radius of a drinking water well. It also gives them 30 days, instead of seven, to provide the required notices.

The bill requires the property owner to, within 30 days of learning of the contamination, (1) determine if there are other water supply wells within 500 feet by using a receptor survey and (2) seek access to all drinking water supply wells within 100 feet for sampling. If access is granted, the owner must (1) sample and analyze the wells' water quality and (2) report the results to the commissioner with any proposals for further action.

DEEP Commissioner Responsibilities (§ 3)

Remediation Plan or Report. Current law requires the commissioner to acknowledge, in writing, the receipt of a written notice of contamination or condition within 10 days after receiving it. The acknowledgement must include a (1) statement informing the property owner that he or she has up to 90 days to provide a plan for

remediating or abating the contamination or condition or (2) directive that provides the steps required to take such action. It requires the commissioner to prescribe action if a plan is not submitted or approved. After the commissioner approves a submitted plan and actions implementing it are completed, he must issue a certificate of compliance. Instead of a plan, an owner may provide, for the commissioner's approval, a report detailing actions already taken to mitigate the contamination or condition.

The bill instead allows the acknowledgement to contain any information the commissioner considers appropriate. It continues to require the property owner to submit the remediation information to the commissioner. And it requires the commissioner to also issue a certificate of compliance when he receives a report, stamped and sealed by a licensed environmental professional (LEP), demonstrating that the release was remediated according to the RSRs.

Electronic Notice. By law, the commissioner must forward a copy of any written notice about the discovery of contamination by a TEP to certain officials, including the chief elected official of the municipality where the pollution was discovered; state senator and representative representing such area; and the labor commissioner where the Division of Occupational Safety and Health within the Department of Labor has authority over the employers, employees, and places of employment on such property. The bill requires these notices to be forwarded by electronic methods.

§§ 4-7 — ENVIRONMENTAL LAND USE RESTRICTION

Required Recording

The bill requires, instead of allows, land owners to execute and record an environmental land use restriction (ELUR), in the municipal land records if (1) the DEEP commissioner has adopted standards for remediating contaminated land (RSRs, see BACKGROUND) and regulations for ELURs; (2) the commissioner, or a LEP supervising certain voluntary clean ups, determines it is consistent with the purposes of the ELUR law and regulations and the remediation

standards; and (3) the restriction will effectively protect human health and the environment.

ELUR appears to have the same meaning as current law's "environmental use restriction," which, by law, is an easement a property owner records in the municipal land records prohibiting specific uses or activities at a property that could harm human health or the environment. The bill replaces "environmental use restriction" with an ELUR.

ELUR Types

The bill specifies that an ELUR may be in the form of current law's restriction or a new "notice of activity and use limitation" (NAUL) that the bill establishes. It permits the DEEP commissioner to include in regulations provisions for a NAUL's form, content, fees, monitoring and reporting, and filing procedures, among other things.

Current Law. The law prohibits an owner from recording a restriction unless other parties with an interest in the property accept it. The owner must record documents to that effect when he or she records the restriction (subordination agreements). The commissioner may waive this requirement if the party's interest is so minor that it is unaffected by the restriction. He must waive the requirement that the owner obtain subordination agreements from the parties whose interests in the land, if acted upon, would not create conditions the restriction prohibits. This restriction (1) runs with the land and binds the owner and his or her successors and assigns and (2) survives foreclosure of a mortgage, lien, or other encumbrance.

The law further requires the owner, within seven days after executing the restriction and receiving the commissioner's or LEP's signature, to (1) record the restriction and subordination documents in the municipal land records and (2) submit a certificate of title to the commissioner that certifies each interest in the land is subordinated to the restriction. The law permits permanent or temporary releases from the restriction if approved in writing by the commissioner. A release

must be recorded in the municipal land records, but the commissioner may waive this requirement under certain circumstances. A permanent release is approved only if the owner shows that the land has been remediated or is unaffected by the release.

Notice of Activity and Use Limitation. The bill establishes a new NAUL for certain releases remediated according to the RSRs and the restriction regulations. The bill allows this restriction to be used and recorded for:

1. achieving compliance with the RSRs' industrial or commercial direct exposure, groundwater volatilization, and soil vapor criteria, by preventing residential activity and use of the area affected by the restriction if the property is (a) zoned to exclude residential use and (b) not used for any regulatorily defined residential purpose;

2. preventing disturbance of polluted soil that exceeds the direct exposure criteria, is inaccessible, and complies with the RSRs, if the pollutant concentrations do not exceed 10 times the direct exposure criteria;

3. preventing disturbance of an engineered control used only to eliminate exposure to polluted soil exceeding the direct exposure criteria, if the pollutant concentrations do not exceed 10 times the direct exposure criteria;

4. preventing the demolition of a building or permanent structure that makes polluted soil environmentally isolated if the (a) pollutant concentrations do not exceed 10 times the direct exposure criteria and the pollutant mobility criteria or (b) total soil volume is 10 cubic yards or less; or

5. any other purpose the commissioner prescribes by regulation.

Decision Document

The bill requires the NAUL to be prepared on a form the DEEP

commissioner prescribes. The NAUL must refer to, and be recorded with, the "decision document" signed by the commissioner or signed and sealed by a LEP. The decision document must explain why the NAUL is appropriate to achieve and maintain compliance with the RSRs. It must also state the:

1. activities and uses that are inconsistent with maintaining compliance;

2. permitted activities and uses;

3. obligations and conditions needed to meet the NAUL's objectives; and

4. nature and extent of pollution that is the basis for the NAUL, with a list of contaminants and their concentrations and horizontal and vertical extent.

Similar to ELUR requirements, the bill prohibits an owner from recording a NAUL in the municipal land records unless he or she provides 60 days written notice to each person with an interest in the land. The notice must be sent by certified mail, return receipt requested, and must indicate the (1) pollution's existence and location and (2) terms of the proposed activity and use limitation. The interest holders can agree in writing to waive the notice period. The NAUL is effective upon recording.

Under the bill, a recorded NAUL must be implemented and adhered to (1) by the property owner and his or her successors and assigns, interest holders in the property, and people licensed to use the property or (2) when conducting remediation on the property. The bill requires a property owner, property lessee, or person with a right to subdivide or sublease the property to incorporate the NAUL into all future deeds, easements, leases, mortgages, licenses, occupancy agreements, or other transfer instruments. This can be done in full or by reference, but must done upon the transfer of any interest in or right to use the property. Under the bill, a NAUL survives foreclosure

of a mortgage, lien, or other encumbrance.

The bill applies current law's enforcement provisions for ELURs to NAULs. It:

1. requires the attorney general to bring a civil action in Superior Court at the commissioner's request (a) for injunctive or other equitable relief to enforce a NAUL or (b) to enforce a civil penalty the commissioner imposes for a NAUL violation;

2. allows the commissioner to issue orders, such as cease and desist orders, to enforce a NAUL;

3. allows any person to intervene in administrative or civil enforcement proceeding instituted by DEEP;

4. subjects a land owner or lessee of property who is part of a civil or administrative action to enforce a NAUL, to strict liability for violations and makes him or her jointly and severally liable to abate the pollution; and

5. subjects a land owner or lessee of property with a NAUL to a civil fine of up to $25,000 for violations of the NAUL or the law and regulations on environmental use restrictions.

It also provides that if a court finds a NAUL is void or without effect, the owner must promptly abate the pollution on the land to the standard for residential or recreational purposes.

BACKGROUND

DECD and CBRA Programs

DECD, through its Office of Brownfield Remediation and Development Assistance, administers several programs to assist with brownfield remediation and redevelopment, such as the Brownfield Municipal Grant Program, Urban Sites Remedial Action Program, Abandoned Brownfield Cleanup Program, Targeted Brownfield Development Loan Program, and Brownfield Remediation and Revitalization Program. The programs provide participants with

financial assistance and liability protection.

The Connecticut Brownfield Redevelopment Authority, a subsidiary of the Connecticut Development Authority, also provides financial assistance for brownfields remediation and redevelopment through direct loans, loan guarantees, and tax increment financing.

Remediation Standard Regulations

The Remediation Standard Regulations (RSRs) provide guidance and standards to determine if remediation of contamination is necessary to protect human health and the environment. They contain numeric and narrative standards for remediating soil and water. To remediate soil, two remediation criteria must be met: direct exposure and pollutant mobility. To remediate a groundwater plume, three criteria apply: groundwater protection, surface water protection, and volatilization criteria.

The RSRs apply to certain actions to remediate polluted soil, surface water, or a groundwater plume at or coming from a release area, but they do not create a requirement for remediation or specify a time-frame to complete it.

Related Bill

sHB 6651, favorably reported by the Commerce Committee, makes many programmatic and technical changes to DECD's brownfield remediation and development programs.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 17 Nay 12 (03/27/2013)